

## Internal Revenue Service

## Department of the Treasury

Washington, DC 20224

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Person To Contact:

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Telephone Number:

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Date:

January 5, 2011

### LEGEND

X =

A =

Trust 1 =

Trust 2 =

State =

Date 1 =

Date 2 =

Date 3 =

Dear :

This responds to a letter dated July 27, 2010, submitted on behalf of X, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated in State on Date 1 and elected to be treated as an S corporation effective Date 1. Trust 1, a trust that was treated under subpart E of part I of subchapter J of chapter 1 of the Code as entirely owned by A, was a shareholder of X. A died on Date 2. On Date 3, pursuant to its governing instrument, Trust 1 transferred its shares of X to Trust 2.

Trust 1 qualified under § 1361(c)(2)(A)(i) as an eligible X shareholder prior to Date 2. Trust 1 qualified under § 1361(c)(2)(A)(ii) as an eligible X shareholder from Date 2 to Date 3. X represents that Trust 2 was eligible to be an electing small business trust ("ESBT") within the meaning of § 1361(e) effective Date 3. However, the trustee of Trust 2 failed to properly file the ESBT election. As a result, Trust 2 was not a permissible shareholder and X's S corporation election terminated on Date 3.

X represents that the failure to file the ESBT election for Trust 2 and the resulting termination of X's S corporation election was not motivated by tax avoidance or retroactive tax planning. X represents that after it discovered the possible terminating event, X initiated corrective action. X and its shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that the termination of X's S corporation election on Date 3 was inadvertent within the meaning of § 1362(f). Accordingly, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date 3 and thereafter, provided X's S corporation election was valid and provided that the election was not otherwise terminated under § 1361(d). This ruling is contingent on the trustee of Trust 2 filing an electing small business trust (ESBT) election pursuant to the procedures in § 1.1361-1(m)(2) with an effective date of Date 3 with the appropriate service center within 120 days of the date of this letter. A copy of this letter should be attached to the ESBT election. If X or its shareholders fail to treat themselves as described above, this letter ruling shall be null and void.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the

Code. Specifically, we express no opinion as to whether X is otherwise eligible to be treated as an S corporation or Trust 2 is eligible to be treated as an ESBT.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Bradford R. Poston  
Senior Counsel, Branch 2  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes